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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/396,128 09/14/99 THOMPSON

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EXAMINER

PM92/0814

TRAN, H

ART UNIT

PAPER NUMBER

THOMAS THOMPSON
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3636

DATE MAILED:

08/14/01

AIR MAIL

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/396,128

Applicant(s)

THOMPSON

Examiner

First Last

Art Unit

1234



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 29, 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above, claim(s) 9-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 15-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

Art Unit: 3636

DETAILED ACTION

1. This is the Final Office Action from the examiner in charge of this application in response to applicant's amendment dated 5/29/01.

Specification

2. The disclosure is objected to because of the following informalities: it is noted that the brief description of figures 5, 6 in the Specification is inconsistent with drawing figures 5 and 6. Drawing figure 5 shows a flat pattern layout, and figure 6 shows an adjustable frieze plate 20, while the brief description describes a two-piece frieze plate, and a runner, respectively.

Appropriate correction or clarification is required.

Drawings

3. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 2/20/01 have been partially approved. More specifically, drawing correction to Fig. 3 has been approved, while drawing correction to Figs 6, 6', and 6A have not been approved due to the inconsistency between the brief description of the drawings and what the drawing figures show.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Line 1, the term said rafter "webs" lacks antecedent basis.

.. Art Unit: 3636

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-6, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by
USP 5,370,577 to JONETT ET AL.

JONETT ET AL discloses an apparatus for securing structural members of a building, FIGs 2-3, comprising all the elements recited in the above listed claims and including a unitary body 22 having a rectangular face with ventilation holes 24, sheathing tabs 26, rafter tabs 32', plate tabs 46', wall tabs 72, and a lower long side 72 extended down, wherein each tab has a plurality of nail holes.

8. Claims 1-2, 4-8 are rejected under 35 U.S.C. 102(b) as being anticipated by
USP 5,236,273 to GILB.

GILB discloses an apparatus for securing structural members of a building, FIG 9, comprising all the elements recited in the above listed claims and including a unitary body 27 having a rectangular face, sheathing tabs 34-36, rafter tabs 32, and plate tabs 33, wherein each tab has a plurality of nail holes.

• Art Unit: 3636

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claims 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over JONETT ET AL.

JONETT ET AL discloses an apparatus for securing structural members of a building, FIGs 2-3, comprising all the elements recited in the above listed claims and including a unitary body 22 having a rectangular face with ventilation holes 24, sheathing tabs 26, rafter tabs 32', plate tabs 46', and wall tabs 72, wherein each tab has a plurality of nail holes. The only difference being that JONETT ET AL does not disclose the apparatus being formed of two flat plates, with one of said plates having horizontal tracks with openings on one end, and the other plate having runners with faces and arms.

Art Unit: 3636

It would have been obvious and well within the level of one skill in the art to modify the apparatus of JONETT ET AL by having the apparatus being formed of two flat plates, with one of said plates having horizontal tracks with openings on one end, and the other plate having runners with faces and arms for the purpose of making the apparatus adjustable to different sizes.

Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to the apparatus of JONETT ET AL being formed of two flat plates, with one of said plates having horizontal tracks with openings on one end, and the other plate having runners with faces and arms, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954).

Response to Arguments

12. Applicant's arguments filed 2/20/01 have been fully considered but they are not persuasive. In response to applicant's arguments regarding Jonett and Gilb each fails to show "said rectangular face having the lower long side extended down", the examiner take the position that the claimed language fails to distinguish applicant's invention of the lower long side extended down from the elements extending downwardly from the rectangular face of Jonett and Gilb.

Conclusion


13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

Art Unit: 3636

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (703) 308-6302.


Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600

HVT *HVT*
August 12, 2001